

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

AIRGAS USA, LLC

Case 09-CA-152301

and

STEVEN WAYNE ROTTINGHOUSE, JR.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Summary

Counsel for the General Counsel's ("Region 9") Complaint Based on Breach of Affirmative Provision of Settlement Agreement ("Complaint") represents an unprecedented abuse of prosecutorial discretion. By filing this Complaint more than three years after the alleged facts, Region 9 asserts that an informal settlement agreement that contains default language never expires, regardless of performance, and the underlying case never closes, regardless of compliance.

The Respondent, Airgas USA, LLC, entered into a settlement agreement with Region 9 on August 27, 2015 to resolve case 09-CA152301. Airgas fully performed the terms of the settlement agreement by posting the remedial notice for 60 consecutive days while refraining from communicating in a manner that detracted from the notice. On October 3, 2018, however, Region 9 simultaneously issued a "Complaint Based on Breach of Affirmative Provision of Settlement Agreement" and filed a "Motion for Default Judgment" with the National Labor Relations Board

(“NLRB” or “Board”). On October 5, 2018, the National Labor Relations Board issued a Notice to Show Cause; Airgas filed its Response to the Notice to Show Cause on October 19, 2018. On October 25, 2018, Region 9 Filed a Motion to Withdraw Motion for Default Judgment but did not withdraw the related Complaint. May Region 9 prosecute its Complaint more than two years after Respondent fully performed the terms and provisions of a settlement agreement and settlement agreement requires default judgment for non-compliance?

Argument

I. Region 9’s Complaint and Related Motion for Default Judgment are defective.

Respondent incorporates by reference the arguments and legal authority raised by Respondent in its Response to Order to Show Cause dated October 19, 2018.

II. Region 9’s Motion to Withdraw Motion for Default Judgment Obviates Supposed Claim since the Settlement Agreement Itself Requires Default Judgment to Remedy Alleged Breach of Settlement Agreement.

Respondent incorporates by reference the arguments and legal authority raised by Respondent in its Opposition to Counsel for the General Counsel’s Motion to Withdraw Motion for Default Judgment, dated October 29, 2018 and filed concurrently with this Motion to Dismiss.

Conclusion

The Complaint represents an unprecedented abuse of prosecutorial discretion. Therefore, for any one of several reasons, the National Labor Relations

Board should dismiss Region 9's Complaint Based on Breach of Affirmative
Provision of Settlement Agreement and close case 09-CA-152301 on compliance.

Respectfully submitted this 29th day of October, 2018

Airgas USA, LLC

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CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Response to Order to Show Cause was electronically served on all parties in the manner listed below:

Garey E. Lindsay (by E-Filing)
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National Labor Relations Board, Region 9
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Steven Wayne Rottinghouse (by Electronic Mail)
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DATED this 29th day of October, 2018

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